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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

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E.O. 11652: NA

TAGS:C GEN JA

SUBJECT:DEPARTMENT OF JUSTICE REQUEST TO TAKE DESPOSITION
FROM-AMERICANS INCARCERATED IN JAPAN

1. THE DEPARTMENT OF JUSTICE HAS SECURED CRIMINAL INDICT-
MENTS IN THE NORTHERN DISTRICT OF CALIFORNIA, SAN
FRANCISCO, CALIFORNIA, AGAINST CLEOPHAS JAMES KEARNEY,
ANDRE WILLIS KING, EUGENE LEMON, JR., AND FRED NEIL POWELL
FOR VIOLATIONS OF UNITED STATES NARCOTICS LAWS. THE CASE
IS FORMALLY STYLED AS UNITED STATES V. CLEOPHAS JAMES
KEARNEY, ET AL., CRIMINAL NUMBER 74-531-SC (NORTHERN
DISTRICT OF CALIFORNIA). TO SUCCESSFULLY PROSECUTE THIS
CASE, THE DEPARTMENT OF JUSTICE WISHES TO TAKE TESTIMONY BY
DEPOSITION OF TWO AMERICAN NATIONALS, THOMAS JOHN ADAMS
AND THOMAS EDWARD GAMBLE, CURRENTLY INCARCERATED IN
YOKOSUKA PRISON, YOKOSUKA CITY, JAPAN. BOTH OF THESE
INDIVIDUALS HAVE INDICATED THAT THEY ARE WILLING TO PROVIDE
TESTIMONY IN THIS MANNER.

2. EMBASSY REQUESTED TO EXPLORE WILLINGNESS OF GOJ TO MAKE
THE TWO WITNESSES, THOMAS JOHN ADAMS, AND THOMAS EDWARD
GAMBLE AVAILABLE FOR DEPOSITION AT A TIME, PLACE AND DATE
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CONVENIENT TO GOJ. DEPARTMENT OF JUSTICE UNDERSTANDS

THAT MINISTRY OF JUSTICE WOULD BE THE PROPER ORGAN OF THE GOVERNMENT OF JAPAN TO APPROACH IN THIS MATTER, THAT ACTUAL ARRANGEMENTS AS TO TIME, DATE AND PLACE FOR

DEPOSITIONS WILL ACTUALLY BE SET BY WARDEN/SUPERINTENDENT OF YOKOSUKA PRISON.

3. PHYSICALLY, A ROOM SUFFICIENT TO COMFORTABLY HOLD TWO DEPARTMENT OF JUSTICE ATTORNEYS, FOUR DEFENSE COUNSEL, FOUR DEFENDANTS, THE WITNESSES BEING DEPOSED, A STENOGRAPHER, AND A CONSULAR OFFICER COMMISSIONED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA TO PRESIDE AT THE TAKING OF THE DEPOSITION WILL BE NEEDED. ADDITIONALLY, THERE WILL HAVE TO BE SUFFICIENT ROOM FOR ANY PRISON AND/OR SECURITY PERSONNEL WHICH GOJ WISHES TO HAVE ACCOMPANY THE WITNESSES, ADAMS AND GAMBLE, SO AS TO PREVENT THEIR ESCAPE FROM CUSTODY. IT MAY BE THAT EMBASSY TOKYO WOULD BE THE MOST LIKELY LOCATION TO TAKE THE DEPOSITION, BUT GOJ SHOULD HAVE THE FINAL DETERMINATION AS TO WHERE THE DEPOSITION IS TO BE TAKEN FOR SECURITY REASONS; YOKOSUKA PRISON WOULD BE AN ACCEPTABLE LOCATION.

4. IF GOJ IS AGREEABLE TO THIS PLAN, WE SHOULD BE ADVISED AS SOON AS POSSIBLE OF NAME OF CONSULAR OFFICER TO PRESIDE AT TAKING OF DEPOSITION AS COMMISSION FROM THE DISTRICT COURT WILL BE ADDRESSED DIRECTLY TO HIM. HIS DUTIES IN THIS MATTER WOULD CONSIST OF ADMINISTERING AN OATH TO THE STENOGRAPHER WHO WILL RECORD THE TESTIMONY GIVEN BY THE WITNESSES IN HIS PRESENCE; ADMINISTERING AN OATH TO EACH WITNESS BEFORE HE IS QUESTIONED BY ATTORNEYS FOR THE UNITED STATES AND CROSS EXAMINED BY DEFENSE ATTORNEYS; HAVING WITNESSES SUBSCRIBE A TYPE-WRITTEN TRANSCRIPTION OF THEIR TESTIMONY; CERTIFYING THAT TRANSCRIPTION OF THE TESTIMONY FAIRLY REPRESENTS SUBSTANCE OF TESTIMONY GIVEN IN HIS PRESENCE, AND FORWARDING TO CLERK OF UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF CALIFORNIA AT SAN FRANCISCO THE COMPLETED SUBSCRIBED AND ATTESTED - TO TRANSCRIPT OF THE TESTIMONY. CONSULAR OFFICER WILL NOT BE CALLED UPON TO MAKE ANY LIMITED OFFICIAL USE

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RULINGS OR LEGAL DETERMINATIONS ON BEHALF OF THE COURT.

5. ASSUMING THAT GOJ IS WILLING TO ALLOW PRISONERS, ADAMS AND GAMBLE, TO BE DEPOSED, THE DEFENDANTS IN THE CASE, KEARNEY, KING, LEMON AND POWELL, HAVE RIGHT UNDER UNITED STATES CONSTITUTION TO BE THEMSELVES PRESENT AT THE TAKING OF DEPOSITION AND TO BE REPRESENTED BY AMERICAN COUNSEL THEREAT. IF DEFENDANTS CHOOSE TO EXERCISE THEIR RIGHT

TO BE PERSONALLY PRESENT, WILL GOJ ALLOW THEM INTO THE COUNTRY? IT MAY BE THAT POWELL, KING, KEARNEY AND LEMON VIOLATED JAPANESE NARCOTICS LAWS WHILE IN JAPAN DURING THE PERIOD 1972-1974; IF THIS IS TRUE WILL GOJ REFRAIN FROM ARRESTING AND/OR PROSECUTING THEM IF THEY CHOOSE TO

BE PRESENT AT THE TAKING OF THE DEPOSITIONS, SINCE THE UNITED STATES IS ALREADY PROSECUTING THEM FOR RELATED CRIMES?

6. ASSUMING GOJ ALLOWS DEFENDANTS TO ENTER COUNTRY AND THEY DO CHOOSE TO BE PRESENT AND GOJ REFRAINS FROM ARRESTING THEM, CAN GOJ PREDICATE THEIR ADMISSION ON VISAS SUFFICIENTLY RESTRICTIVE IN SCOPE AS TO ALLOW GOJ TO FORCE THE DEFENDANTS TO DEPART AFTER THE TAKING OF THE DEPOSITIONS? CAN GOJ MAKE ARRANGEMENTS TO KEEP DEFENDANTS UNDER CLOSE SURVEILLANCE AND/OR IN CUSTODY TO PREVENT THEM FROM FLEEING? THE VARIOUS UNITED STATES LAW ENFORCEMENT AGENCIES OBVIOUSLY CANNOT DO SO IN JAPAN.

7. CAN THE EMBASSY PROVIDE A COMPETENT AMERICAN STENO-GRAPHER OR PERSON TRAINED AS A COURT REPORTER TO RECORD THE TESTIMONY OF THE WITNESSES? IF A FEE FOR THIS SERVICE WOULD BE REQUIRED, THE DEPARTMENT OF JUSTICE COULD PAY IT. ALTERNATIVELY, ONE COULD BE BROUGHT FROM SAN FRANCISCO IF ABSOLUTELY NECESSARY.

8. WOULD GOJ PERMIT THE DEPOSITION PROCEEDING TO BE VIDEO TAPE RECORDED, AND IF SO, DOES THE EMBASSY HAVE EQUIPMENT TO SO RECORD THE PROCEEDING AND PERSONS COMPETENT TO OPERATE IT? IN THIS CONNECTION, IT MUST BE NOTED THAT THE EQUIPMENT, IF PERMITTED BY THE GOVERNMENT OF JAPAN AND AVAILABLE FOR USE, CANNOT REPEAT, NOT, BE LIMITED OFFICIAL USE

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